

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2016 MAY -3 PM 3:29

Sundara Spa, LLC,

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Plaintiff,

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vs.

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Intuitive Touch, LLC

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Defendant.

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Case No. 2:16-cv-122

JURY TRIAL DEMANDED

CLERK
BY DEPUTY CLERK

COMPLAINT

Plaintiff Sundara Spa, LLC ("Sundara Spa") for its Complaint against defendant Intuitive Touch, LLC d/b/a Sundara Day Spa alleges as follows:

NATURE OF THE ACTION

1. This is an action at law and in equity for trademark infringement arising under the trademark laws of the United States, 15 U.S.C. §§ 1051-1127 and the common law.

THE PARTIES

2. Plaintiff Sundara Spa is a Wisconsin limited liability company with its principal place of business at 920 Canyon Road, Wisconsin Dells, Wisconsin 53965.

3. Upon information and belief, Defendant is a Vermont limited liability company that does business under the name Sundara Day Spa with a principal place of business at 672 U.S. 302-Berlin, Barre, Vermont, 05641.

JURISDICTION

4. This Court has jurisdiction over the subject matter of this action because this is a civil matter arising under the trademark laws of the United States, 15 U.S.C. §§ 1051-1127, jurisdiction being conferred by 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a).

5. This Court has supplemental and pendant jurisdiction over all related claims in accordance with 28 U.S.C. §§ 1338(b) and 1367.

6. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to Sundara Spa's claims occurred in this judicial district and there is personal jurisdiction over Defendant in this judicial district.

7. This Court has personal jurisdiction over Defendant because Defendant is a citizen of this judicial district and it uses its infringing mark within Vermont and this judicial district, causing injury to Sundara Spa within Vermont and this judicial district.

ALLEGATIONS COMMON TO ALL CLAIMS

8. Sundara Spa is a nationally-recognized full-service resort and spa located in Wisconsin Dells, Wisconsin. Sundara Spa offers its guests a wide variety of spa services including massages, facials, body and bath treatments, a salon, and yoga. In addition, Sundara Spa offers luxury suites and villas making Sundara Spa one of the premier spa vacation resorts in the country. Sundara Spa regularly attracts vacationers from throughout the United States, including throughout the northeast region of the United States.

9. Sundara Spa has received recognition and awards from numerous national media publications including Travel + Leisure Magazine (ranking Sundara Spa the #5 destination spa in the world), Condé Nast Traveler (#14 resort spa in America), Good Morning America (#3 favorite spa escape in America), and Spafinder.com (naming Sundara Spa as a top 10 spa in the world to ride to by motorcycle). Sundara Spa has also been featured in national publications such as The Wall Street Journal, National Geographic Traveler, and USA Today, among others.

10. To promote its spa and serve its customers, Sundara Spa operates a website with the domain name www.sundaraspaspa.com, and promotes its products and services bearing the Marks (as defined below) on that website.

11. Sundara has used the marks SUNDARA, SUNDARA SPA, and SUNDARA INN & SPA (collectively the “Marks”) in interstate commerce since at least 2002. Because of the widespread recognition of the Marks associated with Sundara Spa, the U.S. Patent and Trademark Office (“PTO”) has granted Sundara Spa a federal registration for use of the mark SUNDARA INN & SPA. A copy of the federal registration information for that mark, as it appears on the PTO’s Trademark Electronic Search System (“TESS”) database, is attached as **Exhibit A.**

12. Since 2003, thousands of guests have stayed at or visited Sundara Spa’s facilities bearing the Marks, and Sundara Spa has spent millions of dollars promoting its products and services bearing the Marks. As a result, the Marks have acquired secondary meaning among consumers.

13. Defendant operates a spa in Barre, Vermont under the mark “Sundara Day Spa.” Defendant promotes and offers to its customers spa packages and services similar to those offered by Sundara Spa.

14. To promote its business, Defendant operates a website with the domain name www.sundaradayspa.com to promote its spa and uses the mark “Sundara Day Spa” throughout that website.

15. Upon information and belief, Defendant began using the mark “Sundara Day Spa” to promote its spa after Plaintiff Sundara Spa began using its Marks in commerce.

16. Defendant’s use of the mark “Sundara Day Spa” is likely to cause confusion among customers familiar with Plaintiff’s Marks. For example, a search of the term “Sundara Spa” on the Bing search engine at times produces a link to Defendant’s website as the second result, immediately below the link to Sundara Spa’s website. Similarly, a Google search of the

term “Sundara Spa” at times produces a link to Defendant’s website on the first page of search results, below the link to Sundara Spa’s website.

COUNT I
Infringement of Registered Trademarks
in Violation of 15 U.S.C. § 1114

17. Sundara Spa hereby realleges each and every allegation set forth in paragraphs 1 through 16 of this Complaint.

18. Defendant has used in interstate commerce a colorable imitation of Sundara Spa’s registered mark.

19. Defendant’s use of Sundara Spa’s registered mark is likely to cause confusion or mistake, or to deceive, as to the sponsorship, affiliation, connection, or association between the defendant and Sundara Spa, and thus constitutes infringement of Sundara Spa’s registered mark in violation of 15 U.S.C. § 1114.

20. As a direct and proximate result of the unlawful acts described above, Sundara Spa has been damaged in an amount to be determined at the time of trial.

21. Upon information and belief, Defendant is infringing Sundara Spa’s registered mark knowingly, willfully, and in bad faith.

22. Unless enjoined by this Court, the unlawful acts described above will continue to cause irreparable damage, loss, and injury to Sundara Spa for which it has no adequate remedy at law.

COUNT II
Trademark Infringement in Violation
of 15 U.S.C. § 1125(a)

23. Sundara Spa hereby realleges each and every allegation set forth in paragraphs 1 through 22 of this Complaint.

24. Defendant's use of the mark "Sundara Day Spa" to advertise and promote its products and services is likely to cause confusion or mistake, or to deceive, as to the sponsorship, affiliation, connection, or association between Defendant and Sundara Spa, and thus constitutes trademark infringement in violation of 15 U.S.C. § 1125(a).

25. As a direct and proximate result of the unlawful acts described above, Sundara Spa has been damaged in an amount to be determined at the time of trial.

26. Upon information and belief, Defendant is engaging in the unlawful acts described above knowingly, willfully, and in bad faith.

27. Unless enjoined by this Court, the unlawful acts will continue to cause irreparable damage, loss, and injury to Sundara Spa for which it has no adequate remedy at law.

COUNT III
**Common Law Trademark
Infringement and Unfair Competition**

28. Sundara Spa hereby realleges each and every allegation set forth in paragraphs 1 through 27 of this Complaint.

29. Defendant's conduct as detailed herein constitutes trademark infringement and unfair competition under common law.

30. Defendant's actions have caused and will continue to cause Sundara Spa damage and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE Sundara Spa prays for an order and judgment that:

A. Defendant, and anyone acting on its behalf, be permanently enjoined from using the word "Sundara" or any similar word or phrase in any advertising, marketing, promotional, or informational materials, including Defendant's Internet website.

B. In accordance with 15 U.S.C. § 1118, Defendant deliver up for destruction any and all advertisements and marketing and promotional materials in its possession or under its custody or control that use the word “Sundara” or any similar word or phrase in connection with the sale of its services and products.

C. The domain name www.sundaradayspa.com and any other similar domain names owned by Defendant be transferred to Sundara Spa.

D. In accordance with 15 U.S.C. § 1116, Defendant file with the Court and serve on Sundara Spa a report in writing and under oath setting forth in detail the manner and form in which they have complied with the Court’s order in this action.

E. Sundara Spa be awarded damages caused as a result of Defendant’s infringement of Sundara Spa’s Marks.

F. Sundara Spa be awarded treble damages and its reasonable attorney fees pursuant to 15 U.S.C. § 1117 and as otherwise permitted by law.

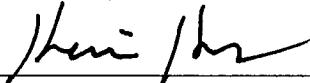
G. Sundara Spa be awarded such other and further relief as the Court may deem just and proper.

JURY DEMAND

Sundara Spa demands a trial by jury.

Dated: May 3, 2016

SUNDRA SPA, LLC

By: 

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